

C. AUTHORITY CONVEYED TO TCEQ BY THE LEGISLATURE

The Texas Supreme Court has determined that agencies “may exercise only those powers the law, in clear and express statutory language, confers upon them.”⁷² The Court further stated “[c]ourts will not imply additional authority to agencies, nor may agencies create for themselves any excess powers.”⁷³ In this matter, the TCEQ is attempting to create excess power by certifying a water company under an “amendment” Application not subject to the controlling rules and statutes.⁷⁴ In fact, prior to the last legislative session there was no provision for approval of a CCN under an “amendment” except in limited circumstances.

Prior to the Enactment of House Bill No. 2876 by the 79th Legislature effective September 1, 2005 (applicable only to applications filed on or after January 1, 2006), an amendment to a CCN was authorized only under TEXAS WATER CODE § 13.254. Therefore for applications filed before January 2006, such as the Applicant’s, the TCEQ could issue a CCN over a new area only under TEXAS WATER CODE §§ 13.241 and 13.242 except in limited circumstances discussed in a subsequent section, but not applicable in this case. The TCEQ does not have the authority to grant this CCN under an amendment application for a CCN filed prior to January 1, 2006.

D. NO SERVICE ALLOWED WITHOUT A CCN

As the Austin Court of Appeals states “[u]nless otherwise specified, then, no public utility may render service without first obtaining from the Commission a

⁷² *Subaru of America, Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002)(citing *Key Western Life Ins. Co. v. State Bd. of Ins.*, 163 Tex. 11, 350 S.W.2d 839, 848 (1961); *Railroad Comm’n v. Rowan Oil Co.*, 152 Tex. 439, 259 S.W.2d 173, 176 (1953).

⁷³ *Id.* (citing *Key Western Life Ins.*, 350 S.W.2d at 848; *Rowan Oil*, 259 S.W.2d at 176).

⁷⁴ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. ED 5, p. 3; Exh. ED 7 p. 5 (recommending the approval of Applicant’s Application by Mr. Adhikari and Mr. Smith).

certificate that the present or future public convenience and necessity require or will require the installation, operation, or extension of such services.”⁷⁵ Under the law applicable to this case, utilities are required to obtain certificates from the TCEQ to operate a water supply or sewer company.⁷⁶ TEXAS WATER CODE § 13.242 clearly states that a utility may not provide water supply or sewer service without a certificate of convenience and necessity.⁷⁷ Thus utility companies, such as the Applicant, must secure a CCN to serve an area. As evidenced by the testimony⁷⁸ and Application⁷⁹ on record in this matter, the Applicant seeks to serve a new area and must receive a certification from the TCEQ. The TCEQ may grant a CCN under the statute to authorize service but the commission must follow the legislature’s developed standards to ascertain whether an applicant for a certificate is qualified.⁸⁰

E. LEGISLATURE’S “REASONABLY CLEAR STANDARDS” FOR ISSUING A CCN

In the TEXAS WATER CODE § 13.241, the legislature provided “reasonably clear standards” to the TCEQ as to the criteria required of applicants to receive a Certificate of Convenience and Necessity. Reinforcing the need to use the standards in issuance of a CCN, the Austin Court of Appeals stated “[t]he factors the Commission must consider in determining whether to award a certificate are expressions of ‘legislative standards’ guiding the Commission in its administration of the certification process.”⁸¹ Included within the criteria, the legislature mandated that the TCEQ “shall ensure that the

⁷⁵ *City of Carrollton*, 170 S.W.3d at 210 (citing TEX. WATER CODE § 13.242(a)(West 2000)).

⁷⁶ TEX. WATER CODE § 13.242 (West 2000).

⁷⁷ TEX. WATER CODE § 13.242(a)(West 2000).

⁷⁸ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker, p. 26, ll. 3-11 (establishing that the new water and sewer system is to be construct over the 5,000 acres).

⁷⁹ Id., Exh. A1, exh. 1.

⁸⁰ TEX. WATER CODE § 13.241 (West 2000).

⁸¹ *City of Carrollton*, 170 S.W.3d at 210 (citing *Public Util. Comm’n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref’d n.r.e.)).

applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service” and “access to an adequate supply of water”.⁸² However, the Applicant and the TCEQ are proceeding as if these requirements do not apply to a CCN “Amendment Application.”⁸³ Thus by calling the proposed expansion an amendment, the Applicant seeks to avoid complying with the legislature’s requirement as put forth in the TEXAS WATER CODE and under the TEXAS ADMINISTRATIVE CODE containing TCEQ requirements for granting a CCN.⁸⁴ As discussed, the TCEQ is not allowed to issue a CCN without adhering to the legislature’s standards for the certificates or else it exceeds the authority granted by the legislature.

F. LEGISLATIVE AUTHORITY TO EXTEND SERVICE WITHOUT ISSUANCE OF A CCN

Anticipating situations whereby a water and/or sewer CCN should be allowed without qualifying under the requirements of TEXAS WATER CODE §§ 13.241, 13.242, the legislature provided for circumstances in which a utility could expand its area without applying for a CCN. The only exception is found at TEXAS WATER CODE § 13.243. This section allows for an extension of service by a company into a contiguous area within one-quarter mile of the utility’s certified area or an extension into an area already covered

⁸² TEX. WATER CODE § 13.241(a), (b)(2) (West 2000).

⁸³ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Adhikari, p. 120, ll. 5-7 (testifying the Applicant satisfied TCEQ technical requirements); Adhikari, p. 141, ll. 8-12 (testifying all information had been received from Applicant to recommend approval of the CCN); Adhikari, p. 123, ll. 20 – p.124, ll. 16 (testifying he was unable to determine if the maps submitted were sufficient); Adhikari, p.126, ll. 9-18 (testifying the Applicant had not provided plans and specifications that must be approved by the TCEQ); Adhikari, p. 126 l. 19 – p. 127 l. 17 (testifying that the Applicant submitted a contract in response to application question G. that did not pertain to the 5,000 acre proposed service area).

⁸⁴ Id., Exh. A1, exh. 1(submitting only a portion of the information requested by the TCEQ form); Exh, P8 (responding to the TCEQ request for information by merely stating the developer would be providing all infrastructure).

by its CCN or served by the utility.⁸⁵ Those facts do not exist in this case therefore the Applicant is not exempt from satisfying the legislative standards.

G. EVADING CCN REQUIREMENTS BY USING “AMENDMENT”

The Applicant filed an amendment application but such application, considering the facts of this case, is improper. The only provision for an amendment of a CCN for this Applicant is provided under TEXAS WATER CODE § 13.254. This section clearly allows amendment of a CCN when a utility is unable to service an area.⁸⁶ Under this section an amendment is not allowed to expand service into an area unless the area is already under a CCN.⁸⁷ This provision allows for the amendment of an area already covered by a CCN whether the amendment is for reduction of the area served or substitution of service by another utility company.⁸⁸ Neither is the situation in this case. Therefore the amendment application cannot stand to support the issuance of a certificate over the proposed area. Of course since submission of this application, the statute has been amended to allow for amendment of a CCN but this applies only to Applications filed on or after January 1, 2006.

Whether the Applicant and TCEQ call this application an Amendment Application or a CCN Application, the parties must comply with the reasonably clear standards set forth in TEXAS WATER CODE § 13.241 effective as of the Applicant’s filing date.⁸⁹ Even if the TCEQ is granted broad power by the legislature to administrate over the granting of a CCN, a CCN issued under an “Amendment Application” must conform

⁸⁵ TEX. WATER CODE § 13.243 (West 2000).

⁸⁶ TEX. WATER CODE § 13.254. (West 2000).

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ See *City of Carrollton*, 170 S.W.3d at 210 (citing *Public Util. Comm’n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref’d n.r.e.).

to the stated legislative policy, purpose and standards. As previously stated, the Austin Court of Appeals has held the TCEQ must consider TEXAS WATER CODE factors as these “are expressions of ‘legislative standards’ guiding the Commission in its administration of the certification process.”⁹⁰ The TCEQ cannot evade the legislature’s specific requirements under the statutes⁹¹ to grant these certificates by merely calling it an “amendment.” Arguably, the use of an “Amendment Application” by the TCEQ could be allowed, but not to the extent that use of “Amendment” allows ignoring the legislative requirements for a CCN found in TEXAS WATER CODE § 13.241.

H. BURDEN OF PROOF

In the TEXAS WATER CODE § 13.241, the legislature provided “reasonably clear standards” to the TCEQ as to the criteria required to issue a Certificate of Convenience and Necessity.⁹² Included within these criteria the legislature mandated the TCEQ “shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.”⁹³ The legislature also required that the Applicant have “access to an adequate supply of water.”⁹⁴ The Applicant bears the burden proof on these elements in order to warrant the issuance of a CCN.

SUMMARY

The Applicant in the matter before the Court is requesting Certificate of Neccessity and Convenience over five-thousand (5,000) acres with a proposed one-

⁹⁰ See *City of Carrollton*, 170 S.W.3d at 210 (citing *Public Util. Comm'n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref'd n.r.e.).

⁹¹ TEX. WATER CODE 13.241 (West 2000).

⁹² See generally, *City of Carrollton*, 170 S.W.3d at 210 (stating the commission must consider the legislative standards in issuing a CCN).

⁹³ TEX. WATER CODE § 13.241 (a)(West 2000)

⁹⁴ TEX. WATER CODE § 13.241 (b)(West 2000)

thousand seven hundred (1,700) connections.⁹⁵ In an attempt to secure TCEQ approval, the Applicant has filed an amendment application prior to the effective date of the laws now allowing for amendments in these type cases.⁹⁶ Regardless of the title, the application submitted must comply with the legislative and TCEQ requirements for issuance of a CCN.⁹⁷ Furthermore, the Applicant does not qualify for exemptions allowing for the expansion of its service area without receiving a CCN from the TCEQ.⁹⁸ Similarly, there is no statutory authority in the TEXAS WATER CODE to allow an amendment of a CCN under the facts of this case. As provided in the statute, the Applicant must obtain a CCN to serve the proposed service area.⁹⁹ In arriving at the decision whether to issue a CCN, the TCEQ must follow the established legislative standards.¹⁰⁰ Therefore the Applicant must carry its burden of proof to show the financial, managerial, and technical capability to serve the area.¹⁰¹ The Applicant must also prove it has access to an adequate supply of water to serve the proposed area.¹⁰² While the TCEQ has broad powers to administrate over water and sewer utilities, it must comply with the legislature's mandate to ensure the Applicant has adequate water, as well as financial, managerial and technical capabilities to serve the CCN area.¹⁰³ If the TCEQ grants a CCN certificate without ascertaining those elements, it exceeds its powers granted by the legislature.

⁹⁵ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1.

⁹⁶ House Bill No. 2876, Acts 2005, 79th Leg., ch. 1145, § 9, 13(1), eff. Sept. 1, 2005 (applicable to applications filed on or after Jan. 1, 2006).

⁹⁷ TEX. WATER CODE § 13.241 (West 2000); *City of Carrollton*, 170 S.W.3d at 210.

⁹⁸ TEX. WATER CODE § 13.243 (West 2000).

⁹⁹ TEX. WATER CODE § 13.242 (West 2000).

¹⁰⁰ TEX. WATER CODE § 13.241 (West 2000) (setting forth the requirements); *City of Carrollton*, 170 S.W.3d at 210 (stating the commission must consider the legislative standards in issuing a CCN).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

III. BURDEN OF PROOF

1. WATER

A. ADEQUATE SUPPLY OF WATER

The TEXAS WATER CODE §13.241 and TEXAS ADMINISTRATIVE CODE §291.102 provide that the TCEQ shall ensure an applicant has access to an adequate supply of water before issuing a CCN. The question then becomes, what is an adequate supply of water? The Application and all of the submitted documents including the development plat for the expansion area, prove that the Applicant is requesting expansion to serve 5,000 acres with 1,700 water and sewer customers.¹⁰⁴ In determining an adequate supply of water for this expansion the TCEQ rules require that a water supply company have peaking capacity of 0.6 gallons per minute or 1.0 acre ft capability for each unit.¹⁰⁵ While Applicant's consulting engineer avoided testifying as to the total water estimates required for this proposed project,¹⁰⁶ he did establish that for base demand, the TCEQ rules require 0.50 acre feet per connection.¹⁰⁷ While the engineering consultant would not calculate the base demand for the proposed expansion, 0.5 acre feet multiplied by 1,700 units indicates the Applicant must have access to 850 acre feet of water just to satisfy the base demand. The burden of proof is upon the Applicant to show evidence that it is able to supply access to an adequate supply of water.¹⁰⁸ The Applicant did not carry its burden of proof and in fact clearly showed the water available for the project is inadequate.

¹⁰⁴ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1.

¹⁰⁵ Id., Matkin, p. 70, l. 20 – p. 71, l. 4 (establishing that the peaking requirement is 0.6 gpm or 1 acre ft. per year); Exh. A2, exh. 1, p. 3 (stating "TCEQ requires .6 GPM/ Connection for Peak Demand.").

¹⁰⁶ Id., Matkin, p. 71, l. 8 – p. 72, l. 17 (avoiding estimating the peaking requirement for a 1,400 unit development).

¹⁰⁷ Id., Matkin, p. 81, l. 20 – p. 82, l. 2 (agreeing that 250 acre feet is base demand for 500 units).

¹⁰⁸ TEX. WATER CODE §13.241; TEX. ADMIN. CODE §291.102 (stating requirements to receive a CCN).

As discussed in the following sections, the Applicant's own Application, pre-filed testimony, pre-filed exhibits and testimony established that Applicant will only supply the proposed expansion area of 5,000 acres with 250 acre feet of water from a supplemental contract with GBRA. This is less than 30% of the base demand for the number of connections submitted in their Application.

B. Applicant to Provide Only 250 Acre Feet of Water

According to the Non-Standard Service Agreement provided by Applicant to Question 2.B. of the Application, the property owner requested Applicant to provide water service over 5,000 acres and 1,700 customers.¹⁰⁹ However, it is established that the Applicant will only provide 250 acre feet to the proposed expansion area. Applicant's Vice President, Mr. Parker, stated in his pre-filed testimony and hearing testimony, only 250 acre feet of surface water from GBRA will be used for this expansion.¹¹⁰ He specifically stated that the 250 acre feet supply will be used for base and peaking if the Developer cannot drill wells to increase their supply.¹¹¹ Mr. Nichols and Mr. Matkin verify that the Applicant will only supply 250 acre feet of surface water from GBRA to be used as the water supply.¹¹² This is well short of the required 1,649 peaking requirement as well as the 850 acre feet required just for the base demand of the project. Mr. Nichols further states that the Developer will be responsible for developing wells to meet the peak demand.¹¹³ Mr. Nichols' testimony establishes that the Applicant will not supply or intend to supply the additional water required for the proposed expansion that will require 850 acre feet base demand and 1,649 peak demand. Thus evidence before

¹⁰⁹ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1, p. 7.

¹¹⁰ Id., Parker, p. 25, ll. 6-9; Exh. A3, p. 5, l. 5-11.

¹¹¹ Id., Exh. A3, p. 5, ll. 14-22.

¹¹² Id., Exh. A1, p. 5, l. 10-20; Matkin, p. 81, ll. 20-24.

¹¹³ Id., Exh. A1, p. 5, ll. 10-20.

the Court establishes that the Applicant does not have adequate water to receive a grant of this amendment under the TEXAS WATER CODE and TEXAS ADMINISTRATIVE CODE requirements previously cited.¹¹⁴

While the Applicant might allude that additional water is available, the burden is to prove the company has actual access to adequate water. In cross examination the Executive Director asked Mr. Parker if there was a provision in Applicant's GBRA supply contract allowing for an increase in the amount of water purchased.¹¹⁵ Mr. Parker said yes.¹¹⁶ However there is no agreement, no letter of intent or other evidence, other than an alleged verbal agreement that the Applicant's Vice President even has doubts about.¹¹⁷ There is no evidence of additional water from the GBRA or any other source despite Applicant's commitment in 2004 to provide water for 1700 connections.¹¹⁸

C. WATER SUPPLY ANALYSIS IS MISLEADING

After requests by the TCEQ representatives, the consulting engineer for this project, John-Mark Matkin, wrote a Water Supply Analysis for this project which was submitted by Mr. Darrell Nichols.¹¹⁹ Despite the previously cited statements that the Applicant would only provide 250 acre feet to the expansion, this Water Supply Analysis used water production showing the use of Applicant's existing wells and the original 500 acre feet from the GBRA to provide water for the expansion.¹²⁰ This report represents that the total amount of 750 acre feet of purchased GBRA water, the total amount, and

¹¹⁴ TEX. WATER CODE §13.241; TEX. ADMIN. CODE §291.102.

¹¹⁵ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker, p. 23, ll. 6-9.

¹¹⁶ Id., Parker, p. 23, l. 10.

¹¹⁷ Id., Parker, p. 24, l. 24 (stating no contract had been signed); Parker, p. 25, ll. 10-14 (stating "I believe we have a verbal agreement as far as GBRA will stand behind a verbal agreement.").

¹¹⁸ Id., Exh. A1, exh. 1, Attach. B, p.1.

¹¹⁹ Id., Exh. P8; Exh. A2, exh. 1.

¹²⁰ Id., Exh. A2, exh. 1, p. 2 (stating the existing well production "will allow 1020 Ac-ft/ Year for water service by existing well Production.").

the existing wells could be used by the expansion.¹²¹ However, according to Mr. Matkin's understanding, the Applicant will only supply 250 acre feet of water to the proposed expansion area.¹²² He further stated that based on the TCEQ regulations total supply of water from the Applicant would only support the base requirements for 500 units.¹²³ Therefore the Water Supply Analysis does not show any additional supply of water other than the 250 acre feet previously discussed.

D. LACK OF ADEQUATE WATER SUPPLY

All of Applicant's management, representative and consultants testify that the Applicant will only have access to 250 acre feet of water for the proposed expansion area. This amount of water is insufficient to meet the needs of the expansion and fails to meet the requirements of TEXAS WATER CODE § 13.241 and TEXAS ADMINISTRATIVE CODE §291.102. The Applicant has failed to carry their burden of proof with regard to this element.

2. SEWER SERVICE

A. LACK OF ADEQUATE SEWER SERVICE

First of all, Mr. Adhikari of the TCEQ, recommends a centralized system for the proposed service area rather than the extensive septic system submitted by the Applicant.¹²⁴ As for adequate and continuous service over the proposed service area, the Applicant submitted no plans or specifications for the new sewer system.¹²⁵ The current sewer customers for the applicant as established by its' 2005 Annual Report filed with the

¹²¹ Id. p. 2-4.

¹²² Id., Matkin, p. 81, l. 20 – p. 82, l. 2.

¹²³ Id.

¹²⁴ Id., Adhikari, p. 131, l. 10 – p. 132, l. 3.

¹²⁵ Id., Adhikari, p. 129, ll. 2-13, (stating the Applicant had submitted no construction plans for the proposed expansion).

TCEQ¹²⁶ and their filed Application¹²⁷ indicates that there are approximately 184 connections served by the waste water facilities. Mr. Parker testified that the waste water system was approximately at 50% to 60% of capacity.¹²⁸ He also identified that the Applicant had expanded its service area to include an additional 135 units.¹²⁹ Considering the current 184 customers utilize 50-60% of the current capacity and that an additional 135 will be coming on line, the assumption the proposed area will be using the existing sewer capacity is unrealistic and impossible. In fact, such a representation that current capacity will be used for the proposed expansion area of 5,000 acres to is a direct threat to the current customers' ability to receive adequate and continuous sewer service from the Applicant. The Applicant has not proven it is capable of providing continuous and adequate service to its existing and proposed customers.

3. FINANCIAL CAPABILITY

Under the TEXAS WATER CODE § 13.241, the Applicant must show financial capability to provide adequate and continuous service.¹³⁰ As discussed below, the Applicant's own financial statements fail to provide evidence of financial stability. Then review of the faxed letter from the Developer's Bank shows the preliminary costs cannot be satisfied. Therefore, the Applicant, even with the help of the Developer, will not be able to install and maintain a system sufficient to service the proposed area.

¹²⁶ Id., Exh. P5, p. 4 (showing at year end 2005 there were 184 sewer customers).

¹²⁷ Id., Exh. A1, exh. 1, pg. 7. C. (showing existing sewer customers of 173).

¹²⁸ Id., Parker, p. 22, l. 17 – p. 23, l. 5.

¹²⁹ Id., Parker, p. 56, l. 18 – p. 57, 10.

¹³⁰ TEX. WATER CODE § 13.241 (a); see also TEX. ADMIN. CODE §291.102.

A. APPLICANT'S FINANCIAL CAPABILITY

The TCEQ considers the proposed project to be ambitious¹³¹ thus the agency informed the Applicant that the “financial capability information required for approval will be comprehensive.”¹³² However, the Applicant presented only partial information and according to Mr. Smith, the TCEQ financial analyst, the checklist on this information is not completed.¹³³ In fact, the Applicant has not submitted phasing data, capital requirement information, cash flow information, annual connection projections, or any financial documents except for year end 2004.¹³⁴ The information Applicant did not provide clearly shows it is not financially capable of serving the proposed expansion area.

The Applicant submitted financial statements with their Application.¹³⁵ In fact, Mr. Smith, witness for the TCEQ, verified that the Applicant has “substantial amount of term debt against a small amount of equity.”¹³⁶ Reviewing the Balance Sheet of the Applicant reveals that the debt to equity ratio is 1.4 which indicates a significant negative equity position and a lack of financial ability to service the proposed expansion area.¹³⁷ Apparently recognizing the Applicant's unsatisfactory debt situation, Mr. Parker testified that the long term debt was paid off, but Mr. Parker, Treasurer of the Applicant, had no knowledge of the new debt-to-equity ratio¹³⁸ Despite its' negative financial condition, the Applicant did not offer any proof as to whether the debt was in fact paid off or

¹³¹ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Smith, p. 97, ll. 1-5.

¹³² Id.

¹³³ Id., Smith, p. 98, ll. 9-19.

¹³⁴ Id., Smith, p. 98, l. 15 – p. 99, l. 12.

¹³⁵ Id., Exh. A1, exh. 1, Attach. G (Applicant's 2004 Year End Income Statement and Balance Sheet).

¹³⁶ Id., Smith, p. 91, ll. 3-5.

¹³⁷ Id., Exh. A1, exh. 1, Attach G (showing 861,309.51 Total Liabilities and 616,500.29 Capital on the Balance Sheet).

¹³⁸ Id., Parker, p. 20, l. 20 – pg. 21, l. 2; , pg. 21, ll. 8-10.

whether the obligation to Clyde B. Smith was just replaced with new debt.¹³⁹ In fact the only evidence of the Applicant's financial capability before the Court at this time is the Applicant's financial statements filed with the application¹⁴⁰ and Applicant's 2005 Annual Report filed with the TCEQ signed on March 28, 2006.¹⁴¹ Both of these filings show no reduction of the debt and there is no other evidence submitted, other than uncorroborated testimony.

Additional information in the financial statements indicate other problems with the Applicant's financial capability. The submitted Balance Sheet shows the Applicant's current Assets to be \$23,474.58 with the largest account receivable owed by an affiliated company Tapatio Springs Golf Resort.¹⁴² Also, the Income Statement shows that the interest expense for the company is 24.26% of expenses paid¹⁴³ which Mr. Smith testifies is higher-than-usual percentage of total expenses.¹⁴⁴ Additionally according to its Treasurer, the Applicant has been paying a monthly water reservation fee for the original 500 acre feet somewhere just south of \$20,000.¹⁴⁵ However, the income statement submitted by the Applicant shows no such expense.¹⁴⁶ Also the Applicant avoided revealing the actual expense amount, by submitting their GBRA contract without its' Exhibit 3, which sets forth the amount of the water reservation fee.¹⁴⁷ The financial information in evidence is incomplete. Furthermore, Mr. Smith agreed that the Applicant would not be able to fund an expansion over the proposed area based on the submitted

¹³⁹ Id., Smith, p. 91, ll. 4-11.

¹⁴⁰ Id., Exh. A1, Exh. 1, Attach. G, Tapatio Springs Service Co. Balance Sheet, Dec. 31, 2004 (showing Long Term Liability to Clyde B. Smith \$905,146.35).

¹⁴¹ Id., Exh. P5, pg. 3 (showing a principal balance on outstanding debt of \$891,809).

¹⁴² Id., Exh. A1, Exh. 1, Attach. G, p. 1 of Balance Sheet.

¹⁴³ Id. p. 1 of Income Statement.

¹⁴⁴ Id., Smith, p. 93, l. 17 – p. 94, l. 5.

¹⁴⁵ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker, p. 42, l. 6 – p. 43, l. 6.

¹⁴⁶ Id., Exh. A1, exh. 1, Attach. G (Applicant's Income Statement).

¹⁴⁷ Id., Exh. A1, exh. 1, Attachment F, p. 11, sec. 3.1; Exh A3, exh.1, p.11, sec. 3.1.

financial statements.¹⁴⁸ As submitted, the Applicant's financial statements clearly show its' inability to provide the financial requirements associated to developing the systems required for serving 1700 units over 5,000 acres of land. The evidence before the Court shows that the Applicant does not possess the financial capability warranting the grant of the requested CCN.

B. FINANCIAL CAPABILITY OF DEVELOPER

Due to the obvious inability of the Applicant to satisfy the financial capability requirement to receive a CCN over the large proposed area, the Applicant offers the Developer's financial capability as a substitute.¹⁴⁹ The Developer must show the financial capability required of the Applicant¹⁵⁰ and the Applicant must show it exercises control over this financial capability. The Austin Court of Appeals has held that where a third party is to be relied upon to satisfy an element required for receiving a CCN, the applicant must have control over the element.¹⁵¹ The Court further refined its interpretation to find that "control" means "the direct or indirect power to direct the management and policies of a person or entity, whether . . . by contract, or otherwise."¹⁵² But first the Developer must show evidence of financial capability.

The only evidence submitted to prove financial capability has been a letter from the Developer's Bank.¹⁵³ The TCEQ has not verified that the letter, dated August 12, 2005, was issued by the bank or if the representations are still valid.¹⁵⁴ Even if this letter had been issued for the Applicant, the amount dedicated to developing the water and

¹⁴⁸ Id., Smith, p. 92, l. 19 – p. 93, l. 4.

¹⁴⁹ Id., Smith, p. 99, l. 13 – p. 100, l. 17.

¹⁵⁰ TEX. WATER CODE § 13.241 (a).

¹⁵¹ *Bexar Metropolitan Water Dist. v. Texas Com'n on Environmental Quality*, 185 S.W.3d 546, 552 (Tex. App. – Austin 2006)(interpreting "possess" as found in the statute).

¹⁵² Id. (citing Black's Law Dictionary 1201 (8th ed.2004)).

¹⁵³ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 4.

¹⁵⁴ Id., Smith, p. 99, l. 13 – p. 100, l. 17; p. 102, ll. 4-6.

sewer systems would be insufficient. The letter states the Developer has “unrestricted funds in the low seven figure amount.”¹⁵⁵ This indicates an approximate range of \$5,000,000 or less for the construction and infrastructure improvements. However the costs for the proposed expansion will far exceed that amount. Mr. Matkin the consulting engineer has estimated that the extension to receive the GBRA water will cost \$2,154,983.¹⁵⁶ However the Developer is only to contribute \$1,500,000 of the \$2,154,983 therefore the Applicant must still pay for \$654,983.¹⁵⁷ Also Mr. Matkin has developed preliminary cost estimates for the water supply system ranging from \$7,000,000 to \$8,000,000.¹⁵⁸ Additionally Mr. Matkin has estimated that the costs for the sewer system will be \$1,500,000 for the lift stations and force mains, as well as \$3,000,000 for the gravity mains.¹⁵⁹ Therefore the engineer’s current total for the cost estimates ranges from at least \$13,654,983 to \$14,654,983. These costs are in the low to mid eight figure amount and nearly 3 times the mid seven figure amount of \$5,000,000. The letter is insufficient to satisfy the statutory requirement as it shows no indication of whether the line of credit extends over the Developer’s numerous other projects, what period the line of credit is to be phased over or what the required repayment terms are. Considering the Applicant bears the burden of proof, one unverified faxed letter is hardly insufficient to establish financial capability for a CCN to be granted over 5,000 acres.

Additionally, the Applicant must show that it exercises control over the Developer’s financial capability.¹⁶⁰ However, any financial guarantee given on the

¹⁵⁵ Id., Exh. A1, exh. 4.

¹⁵⁶ Id., Exh. A2, p. 3, ll. 40-44.

¹⁵⁷ Id., Matkin, p. 69, ll. 18-23.

¹⁵⁸ Id., Matkin, p. 84, ll. 7-11.

¹⁵⁹ Id., Matkin, p. 84, ll. 12-22.

¹⁶⁰ *Bexar Metropolitan Water Dist.*, 185 S.W.3d at 552.

behalf of the Applicant by the Developer can in fact be revoked for various conditions.¹⁶¹

In the Non-Standard Service Agreement, the Developer has the right to unilaterally give “notice of termination of this Agreement” after reviewing the plans for the extension.¹⁶²

In such a case the Developer has no obligation to fund the expansion but the Applicant would still have the duty to serve the area as it developed.¹⁶³ The letter provided as evidence of financial ability is insufficient as it is clearly not in the “control” of the Applicant that will receive the CCN.

Besides the lack of Applicant’s control over the Developer’s financial capability, the inadequacy of the unqualified lender letter and the weakness of the Applicant’s financial information, other issues have not been addressed relating to the required financial capability. The TCEQ indicated that review of the Developer’s standing with the State Comptroller would be done,¹⁶⁴ review of the Applicant’s tariff was warranted,¹⁶⁵ and that the Applicant’s cash flows, staging estimates and construction cost estimates would be required prior to recommendation.¹⁶⁶ The Applicant has not demonstrated financial capability as required by TEXAS WATER CODE § 13.241.

4. MANAGERIAL CAPABILITY

The legislature also required the TCEQ to ensure the applicant possesses managerial capability to provide continuous and adequate service.¹⁶⁷ However the evidence indicates the Applicant lacks the managerial ability for the proposed service area.

¹⁶¹ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker p. 53, ll. 3-9.

¹⁶² Id., Exh. A1, exh. 1, Attach. F; Parker, p. 53, ll. 12-20.

¹⁶³ TEX. WATER CODE 13.250(a) (West 2000) (stating the “certificate obligates its holder to provide continuous and adequate service to every customer and every qualified applicant within its area”).

¹⁶⁴ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Smith, p. 103, ll. 11-20.

¹⁶⁵ Id., Smith, p. 105, ll. 1-9.

¹⁶⁶ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Smith, p. 109, ll. 5-9.

¹⁶⁷ TEX. WATER CODE 13.241(a) (West 2000).

A. LACK OF ADEQUATE PLANNING

The Applicant's current customers have been subjected to numerous periods of drought restrictions.¹⁶⁸ The Vice President testified that GBRA water was needed to alleviate the Applicant's dependence on well water.¹⁶⁹ Therefore, the Applicant reserved 500 acre feet of water from the GBRA in 2002¹⁷⁰ for its current customers.¹⁷¹ But over the last four (4) years, the Applicant has not even purchased one foot of easement to arrange the delivery of the water.¹⁷² In fact, the GBRA completed its facilities to the delivery point with the Applicant¹⁷³ but Applicant failed to construct the pipeline to access the water despite continuous drought conditions¹⁷⁴ the current customers are experiencing. Construction of the pipeline to access the GBRA water has not even begun but the Applicant has committed to service another 135 units south of its current CCN area.¹⁷⁵ Despite access to the needed additional water, with current customers on frequent drought restrictions, the Applicant is increasing the number of customers it is serving without proceeding to receive delivery of water it is paying for. This shows clear evidence of the lack of managerial capability on behalf of the Applicant.

B. LACK OF MANAGERIAL COMPETENCY

There are numerous issues of competency as evidenced by Mr. Parker, first alleging to be the President of the Applicant, then correcting himself to being the Vice

¹⁶⁸ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker, p. 28 l. 23 – p.16 (stating the customers have been on drought restrictions three times in the last 10 months).

¹⁶⁹ Id., Parker, p. 30, ll. 10-16.

¹⁷⁰ Id., Exh. A1, exh. 1, Attach. F, p. 3 of Agreement between Kendall County Utility Company and Tapatio Springs Service Company, Inc. and Guadalupe-Blanco River Authority (establishing the agreement was made and entered into as of the 18 day of March, 2002).

¹⁷¹ Id., Parker p. 25 ll. 1-5; Parker, p. 26, ll. 12-25.

¹⁷² Id., Parker p. 41, l. 20 – p.42, l. 5.

¹⁷³ Id., Parker, p. 58, ll. 13-20 (relating the GBRA water was available in May for its customers).

¹⁷⁴ Id., Parker, p. 28, l. 23 – p. 29, l. 24 (providing dates of drought restrictions).

¹⁷⁵ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker, p. 56, l. 14 – p. 57, l. 10.

President, Secretary, and Treasurer of the Applicant.¹⁷⁶ However, he has filed Annual Reports in 2004 and 2005 with the TCEQ under a Sworn Statement and signed as President.¹⁷⁷ The explanation given by the Vice President, Secretary, Treasurer for his misrepresentation to the TCEQ, the Court and the parties was “I put president sometimes because my dad is president,....”¹⁷⁸ The officers of a company should know their positions within a company and must not misrepresent their position in filings with the State of Texas. Despite his representation that he had been running the Applicant’s operations since 1991,¹⁷⁹ Mr. Parker was confused and could not tell the TCEQ Counsel what the water capacity of the Applicant’s system.¹⁸⁰ Additionally, he did not even know what the well capacity of the system was.¹⁸¹ Furthermore, even though Mr. Parker claims to be the Treasurer for the Applicant, he testified that he has not been responsible for the oversight of the preparation of the Applicant’s financial statements.¹⁸² Finally, he testified that he does not even know what percentage he owns of the Applicant for which he is Vice President, Secretary, and Treasurer.¹⁸³ The testimony clearly shows the Applicant does not have the requisite managerial capability for the proposed expansion area.

¹⁷⁶ Id., Parker, p. 17, ll. 25 – p.18, ll. 1-2. (correcting his prefiled testimony that stated he was president).

¹⁷⁷ Id., Parker, p. 32, ll. 7-19, Exh. A3, Affidavit of John J. Parker; Exh. P4, pg. 6; Exh. P5, pg. 6. (comparing signatures and titles).

¹⁷⁸ Id., Parker, p. 19, ll. 17-18.

¹⁷⁹ Id., Parker, p. 19, ll. 17-20.

¹⁸⁰ Id., Parker, p. 21, l. 25 – p. 22, l. 3.

¹⁸¹ Id., Parker, p. 22, ll. 4-6.

¹⁸² Id., Parker, p. 19, ll. 21-25.

¹⁸³ Id., Parker, p. 20, ll. 1-14.

5. TECHNICAL CAPABILITY

The legislature also required the TCEQ to ensure the applicant possesses technical capability to provide continuous and adequate service.¹⁸⁴ However, the Applicant in this case has submitted no evidence of its technical capability.

The TCEQ requested engineering report to show continuous adequate water and sewer service, existing system capacity, capacities in reserve, descriptions of the development phases, number of estimated connections on each phase, distance between existing system and the new development from the Applicant.¹⁸⁵ The Applicant did not submitted these to the TCEQ,¹⁸⁶ and it has not submitted any construction plans.¹⁸⁷ Furthermore, despite receiving additional time to supply information to the TCEQ,¹⁸⁸ the Applicant only submitted a letter from the utility consultant and a 4 page water supply analysis¹⁸⁹ to show its technical capability for the proposed water and sewer systems that are to serve 1,700 units over a 5,000 acre expansion. The Applicant has submitted no evidence of any consequence to prove its technical capability which would warrant issuance of a CCN over the proposed service area.

¹⁸⁴ TEX. WATER CODE § 13.241(a) (West 2000).

¹⁸⁵ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. P9, p. 2.

¹⁸⁶ Id., Adhikari, p. 128, ll. 17-19.

¹⁸⁷ Id., Adhikari, p. 129, ll. 7-16.

¹⁸⁸ Id., Adhikari, p. 139, ll. 7-13.

¹⁸⁹ Id., Exh. P8.

SUMMARY

As established in the preceding sections, the Applicant has not carried its burden of proof on the following elements. First, the Applicant must show access to an adequate supply of water for the proposed expansion area but in fact all of the evidence proves that the current customers do not even have an adequate supply of water . Second, the sewer service information is similarly inadequate to justify issuance of a CCN over the proposed area. Third, considering the required financial capability, neither the Applicant or the Developer has adequate proof and the Applicant does not have control of the Developer's financial capability as needed. Fourth, the evidence concerning the Applicant's managerial capability proves it is not capable of managing the proposed expansion project. Fifth, the Applicant provided no plans, no specifications, no estimates of phasing, no distance between the existing system and the proposed new development as requested by the TCEQ to evaluate its technical capability. There is no evidence to support finding the Applicant submitted sufficient evidence to show compliance with the required statutory criteria. The Applicant failed to carry its burden on all of these elements.

IV. CCN APPLICATION

TEXAS WATER CODE § 13.244 requires that an applicant submit an application to obtain a CCN.¹⁹⁰ As discussed in the following sections, the Applicant submitted an application that is incomplete and inaccurate. There is no written description in the record of the area requested to be served, the water agreement submitted as evidence of water supply does not pertain to the proposed area nor is all of the agreement included with the application. Additionally, there is no proof in the record that the Application is

¹⁹⁰ TEX. WATER CODE § 13.244 (West 2000).

administratively complete. Mr. Adhikari and Mr. Smith for the TCEQ did not make the decision the application was administratively complete.¹⁹¹ Additionally, there is no letter in evidence finding the application administratively complete.¹⁹² This is relevant in that the Application does not contain the information requested by the TCEQ. The Application is legally insufficient and administratively incomplete as established by the record.

A. AREA REQUESTED TO BE SERVICED

The area to be served is not described by the information submitted with the Application. TCEQ asks whether there has been a request for service over the proposed area at 2.B. of the Applicant's Application.¹⁹³ The response to the inquiry is See Attachment B which is the Non-Standard Service Agreement.¹⁹⁴ Page 1 of the agreement states the land covered by this agreement is legally described by Exhibit 1 with an Exhibit 2 providing a map of the area.¹⁹⁵ However, there is no Exhibit 1 or Exhibit 2 attached or submitted with this agreement.¹⁹⁶ Furthermore, the Applicant has not submitted any copy of the Non-Standard Service Agreement in discovery or to the TCEQ which contains a legal description or map as designated. Thus the area over which service has been allegedly requested is not in evidence. Additionally, the Application specifies that the "service area boundaries should be shown with such exactness that they can be located on the ground" for the maps submitted.¹⁹⁷ However, the maps in evidence

¹⁹¹ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Adhikari, p. 120. ll. 8-12; Smith 112, p. 16-20.

¹⁹² See Id., Smith p. 113, ll. 1-4 (stating a letter is issued when an application is found administratively complete).

¹⁹³ Id., Exh. A1, exh. 1, p. 3 of Application.

¹⁹⁴ Id., Exh. A1, exh. 1, Attach. B.

¹⁹⁵ Id., (p.1, para. 2).

¹⁹⁶ Id., (reviewing the complete exhibit no Exhibit 1 or 2 exists).

¹⁹⁷ Id., Exh. A1, exh. 1, p. 3-5, E.

do not conform with this instruction.¹⁹⁸ These maps do not even show the county roads or streets in the area.¹⁹⁹ Considering that there is no legal description and no reference to any other instrument describing said land, and the submitted maps do not comply with the instructions, this response to inquiry 2.B. of the Application is therefore insufficient.

B. PURCHASED WATER

At 5.G. of the Application, TCEQ asks for a certified copy of the most recent water capacity purchase.²⁰⁰ Applicant responded with the indication that Attachment F answered this request.²⁰¹ However the contract at Attachment F between GBRA and the Applicant is not even relevant to this Application as established by the Applicant's utility consultant, Mr. Nichols, in his trial testimony²⁰² and in the Non-Standard Service Agreement.²⁰³ Thus there is no certified copy of the water capacity purchase to be used for the development of the proposed expansion area and the Application is therefore incomplete. At the evidentiary hearing, the utility consultant for the applicant verified that the contract submitted to the TCEQ, to show the applicant had sufficient water, was not relevant for the proposed expansion area.²⁰⁴

C. EXISTING SYSTEM

The classification of the proposed service area as an "existing system" is important as the Applicant avoids providing important data required of new systems.²⁰⁵

¹⁹⁸ Id., Exh. A1, exh. 1, Attach. C; Exh. A4.

¹⁹⁹ Id.

²⁰⁰ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1, p. 7.

²⁰¹ Id.

²⁰² Id., Nichols, p. 15, ll. 2-21.

²⁰³ Id., Exh. A1, exh. 1, Attachment F.

²⁰⁴ Id., Nichols, p. 15, ll. 2-21.

²⁰⁵ Id., Adhikari, p. 125, ll. 18-21 (testifying that if this was a new system additional information would be required such as construction and phasing).

The TCEQ representative evaluating the technical aspects of the application²⁰⁶ classifies the proposed system as an existing system.²⁰⁷ However, the Applicant's Vice President the pipeline to receive the water from GBRA is yet to be constructed, and he states a new water and sewer system will be constructed on the proposed 5,000 acre expansion area.²⁰⁸ Mr. Nichols, Applicant's utility consultant, wrote to Mr. Adhikari that "[e]xisting sewer capacity will not be utilized to serve the proposed development."²⁰⁹ Mr. Nichols, while obviously reluctant to state the proposed water and sewer system will be a stand alone system, testified "There's no system out there at this time."²¹⁰ As previously discussed, the Vice President also testified that Proposed expansion to the south of the Applicant will utilized all of the existing excess capacity of the Applicant.²¹¹ Furthermore, the Applicant repeatedly states that the Developer is responsible for constructing a completely new water and sewer systems.²¹² Thus the evidence conclusively proves this will be a new stand alone system. Considering the sewer supply CCN application, the applicant's utility consultant wrote to TCEQ personel stating the "existing system will not be utilized."²¹³ However, the TCEQ classifies this proposed sewer system as an existing system.

There is overwhelming and substantial evidence proving both the water supply system and the sewer service system are new stand alone systems. Even Mr. Adhikari

²⁰⁶ Id., Adhikari, p. 118, ll. 24 – p. 119, l. 2 (stating he determined whether an applicant had technical capability to service the proposed area).

²⁰⁷ Id., Adhikari, p. 124, ll. 17-19; p. 125, ll. 11 -13 (testifying it was his decision this was not a new stand alone system but an existing system).

²⁰⁸ Id., Parker, p. 26, ll. 3-15.

²⁰⁹ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. P8, para. 2.

²¹⁰ Id., Nichols, p. 16, ll. 2-11.

²¹¹ Id., Exh. A1, exh. 1, pg. 7. C. (showing existing sewer customers of 173); Parker, p. 22, l. 17 – p. 23, l. 5; p. 56, l. 14 – p. 57, l. 1.

²¹² Id., Exh. P8, para. 2.

²¹³ Id., Adhikari, p. 133 l. 23 – p.134 l. 1; Exh. P8, p. 1.

testified that final engineering plans and specifications would need to be reviewed to determine if the sewer system was a new stand-alone system.²¹⁴ The TCEQ cannot recommend approval of the sewer CCN without any of the required engineering plans and specifications showing impact on the existing customers.²¹⁵ The Application cannot be deemed complete without this relevant information.

D. GBRA CONTRACT INCOMPLETE

Even the GBRA Contract for the original 500 acre feet of water is incomplete. This is relevant because the additional 250 acre feet is an amendment to the original contract thus the provisions not amended are controlling on the supplemental contract.²¹⁶ The original contract between the Applicant and the GBRA incorporates Exhibit 2 “Customer’s System” and Exhibit 3 that is a schedule of fees²¹⁷ but none of these contracts are submitted in the application or with their pre-filed testimony Exhibits. Therefore the actual costs cannot be ascertained by the TCEQ in their analysis. This contract is crucial to the proposed development and the failure to submit a complete copy is additional proof the application is insufficient.

SUMMARY

The Application submitted is incomplete and inaccurate therefore any decision to issue a CCN is unwarranted. There is no legal description or map attached to the Non-Standard Service Agreement which provides is the contract with the developer and the basis for the Applicant’s assertion that service over a specific are has been requested.²¹⁸

²¹⁴ Id., Adhikari, p. 134 ll. 2-10.

²¹⁵ TEX. WATER CODE § 13.246 (c) (allowing that a certificate shall be granted after consideration by the commission of the probable improvement of service or lowering of cost to consumers).

²¹⁶ SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A3, exh. 3 (setting forth the amendments to the original contract).

²¹⁷ Id., Exh A1, exh. 1, Attachment F, p. 11, sec. 3.1; Exh. A3, exh. 2, p. 11, sec. 3.1.

²¹⁸ Id., Exh. A1, exh. 1.

The document submitted as evidence of water supply capacity is not certified, as requested in the application, and does not even pertain to the proposed expansion area.²¹⁹

The classification of the proposed systems as existing is incorrect therefore fails to ascertain all of the factors necessary to consider the impact on the current customers.²²⁰

Additionally, the Applicant did not submit the complete contract with the GBRA. The Application is incomplete and inaccurate providing no reliable basis for the TCEQ to grant a water supply CCN or a sewer supply CCN as requested by the Applicant.

SECTION THREE

For the reasons presented in SECTION ONE and SECTION TWO, the Ratepayers hereby file exceptions to the ALJ's Proposal for Decision and Order; Findings of Fact Nos. 4, 5, 10, 20, 27, 28, 32, 37, 39, 41, 43, 44, 45, 46, 47, 48, 49, 50, 52, 54, 57, 61, 64, 66, 68, 70, 72, 75, 78, 79, 90, 91, 95, 98, 105, 109, 111, 115, and 123; Conclusions of Law Nos. 4, 5, 6, 7, 22, 23, 24, 25, 26, 31, 32, 33, 36, 38, and 39. The Ratepayers request that the ALJ amend these.

²¹⁹ Id., Exh. A1, exh. 1, Attach. F; Nichols, p. 15, ll. 2-21.

²²⁰ TEX. WATER CODE § 13.246 (c); SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Adhikari, p. 134 ll. 2-10.

CERTIFICATE OF SERVICE

I certify that on October 26, 2006, a true and correct copy of Ratepayers Brief Filed in Response to SOAH Proposal for Decision and Exceptions via Fax Transmission to all parties on the following mailing list.


ELIZABETH R. MARTIN

**MAILING LIST - TAPATIO SPRINGS SERVICE COMPANY, INC.
SOAH DOCKET NO. 582-06-0425; TCEQ DOCKET NO. 2005-1515-URC**

ADMINISTRATIVE LAW JUDGE
Fax 1 512 475 4994

William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearing
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Austin, TX 78701

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Eric Sherer, Attorney at Law
11124 Wurzbach Road, Suite 100
San Antonio, TX 78232


CONCLUSION

As established, the Applicant must comply with the rules and laws governing the issuance of a CCN.²²¹ Therefore, the Applicant bears the burden of proof to show it possesses the financial, managerial and technical capability to provide adequate and continuous service as well as proving it has access to an adequate supply of water.²²² Additionally, the Applicant must submit a legally sufficient application to secure approval from the TCEQ.²²³ Considering the Applicant has failed to carry its burden in proving its qualifications, the request for certification should be denied.

Prayer

For these reasons, Ratepayers ask the ALJ to amend its PFD and Order to deny granting of the CCN Amendment.

Respectfully submitted,
LAW OFFICE OF ELIZABETH R. MARTIN

By: 
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²²¹ TEX. CONST. art. II § 1; TEX. WATER CODE, Chap. 13; TEX. ADMIN. CODE Title. 30.

²²² TEX. WATER CODE § 13.241 (West 2000).

²²³ TEX. WATER CODE § 13.246 (West 2000).

EXHIBIT A

AFFIDAVIT OF W. E. WEST, JR.

STATE OF TEXAS §

COUNTY OF GUADALUPE §

Before me, the undersigned authority, on this date personally appeared W. E. West, Jr., who after being duly sworn stated as follows:

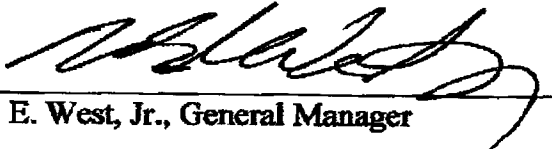
- "1. My name is W. E. West, Jr. I am over the age of eighteen (18) years and I reside at 9000 FM 20, Seguin, Texas, 78155. I have never been convicted of a crime, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are all true and correct.
2. I am the General Manager of the Guadalupe-Blanco River Authority ("GBRA"), and have been since 1994. I have overall management responsibility for all of GBRA's operations and employees, and I oversee implementation of all policies and decisions of the GBRA Board of Directors. Prior to my employment with GBRA, I was employed by the Lower Colorado River Authority.
3. I have become aware of certain proposed findings relating to GBRA in an October 6, 2006 Proposal for Decision in the following matter before the State Office of Administrative Hearings ("SOAH"):

SOAH Docket No. 582-06-0425; TCEQ Docket No. 2005-1516-UCR; In Re: Application of Tapatio Springs Service Company, Inc. ("Tapatio") to Amend Certificates of Convenience and Necessity Nos. 12122 and 20698 in Kendall County, Texas.

4. The proposed findings at issue are as follows:
 50. Tapatio has approached GBRA for additional water, and GBRA has informally, verbally agreed to provide an additional 250 ac-ft., beyond the 750 ac-ft. which it has formally contracted to provide.
 51. Approximately 1,600 ac-ft is available from GBRA for private utilities in the general area.
5. Proposed Finding No. 50 is incorrect. A representative of Tapatio did make a verbal request of David Welsch, Director of Project Development for GBRA, that GBRA agree to amend its existing contract with Tapatio to increase the maximum amount of treated water to be supplied annually by GBRA an additional 250 acre-feet (from 750 acre-feet to 1,000 acre-feet annually), but at my direction Mr. Welsch responded that GBRA would *not* agree to the requested amendment. See accompanying affidavit of Mr. Welsch.


6. There is no basis for Proposed Finding No. 51. GBRA has made no determination that it has 1,600 acre-feet, or any other amount, of treated water available for private utilities in the area."

FURTHER AFFIANT SAYETH NOT.


W. E. West, Jr., General Manager

SWORN TO AND SUBSCRIBED before me by W. E. West, Jr. on this 26th day of October, 2006, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

My Commission Expires:

May 11, 2008

AFFIDAVIT OF DAVID WELSCH

STATE OF TEXAS §

COUNTY OF GUADALUPE §

Before me, the undersigned authority, on this date personally appeared David Welsch, who after being duly sworn stated as follows:


- "1. My name is David Welsch. I am over the age of eighteen (18) years and I reside at 202 Oldtowne, Seguin, Texas. I have never been convicted of a crime, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are all true and correct.
2. I am employed by the Guadalupe-Blanco River Authority ("GBRA") and have been since 1973. My current position is Director of Project Development.
3. On or about July 14, 2005, Mr. Stan Scott and Mr. Jay Parker, who represented themselves to be the managers or officers with the Tapatio Springs Service Company, Inc. ("Tapatio")/ Kendall County Utility Company, requested an increase in the original Raw Water Commitment of Water from the Western Canyon Regional Treated Water Supply System from 500 acre feet to 750 acre feet per annum. Said request was granted by the Board of Directors. Subsequent to that approval Mr. Scott and Mr. Parker verbally requested that GBRA agree to amend its contract with Tapatio/ Kendall again to increase the maximum amount of treated water to be supplied annually by GBRA by an additional 250 acre-feet (from 750 acre-feet to 1,000 acre-feet annually). At the direction of Mr. W.E. West, Jr., the General Manager of GBRA, I responded verbally to both Mr. Scott and Mr. Parker that GBRA would *not* agree to the requested additional amendment."

FURTHER AFFIANT SAYETH NOT.


David Welsch

SWORN TO AND SUBSCRIBED before me by David Welsch on this 26th day of October, 2006, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

My Commission Expires:

May 11, 2008

CCN/12122/582-06-0425/SO

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Martin A. Hubert, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 16, 2006

LaDonna Castañuela
Office of Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, Mail Code 105
Austin, Texas 78711-3087


Re: TCEQ Docket No. 2005-1516-UCR, Application by Tapatio Springs Service, Inc.
to Amend Certificates of Convenience and Necessity Nos. 12122 and 20698 in
Kendall County, Texas

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality is the
Executive Director's Response to Ratepayers' Letter Dated November 15, 2006.

If you have any questions, please call me at 239-0608.

Sincerely,


Jessica Luparello
Staff Attorney
Environmental Law Division

Enclosures

cc: See Mailing List

RECEIVED
NOV 16 2006
TCEQ
12122/582-06-0425/SO

MAILING LIST
TAPATIO SPRINGS SERVICE COMPANY, INC.
SOAH DOCKET NO. 582-06-0425; TCEQ DOCKET NO. 2005-1516-UCR

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SOAH DOCKET NO. 582-06-0425
TCEQ DOCKET NO. 2005-1516-UCR

APPLICATION OF TAPATIO
SPRINGS SERVICE COMPANY, INC.
TO AMEND CERTIFICATES OF
CONVENIENCE AND NECESSITY
NOS. 12122 AND 20698 IN KENDALL
COUNTY, TEXAS

§ BEFORE THE STATE OFFICE
§
§ OF
§
§ ADMINISTRATIVE HEARINGS

THE EXECUTIVE DIRECTOR'S RESPONSE TO RATEPAYERS' LETTER DATED
NOVEMBER 15, 2006

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality, by and through Jessica Luparello, a representative of the Commission's Environmental Law Division, and files this Response, as follows:

The ED objects to Ratepayers' attempt to submit new evidence, in the form of affidavits of W.E. West, Jr. and David Welch, after the record has closed. Allowing Ratepayers to submit new evidence prejudices the parties by robbing them of an opportunity to question Mr. West and Mr. Welch regarding statements made in their affidavits.

Ratepayers offer no worthy grounds for their request and instead merely continue to restate arguments which have been considered and ruled upon. The ED, therefore, supports Applicant's request that this matter be set for consideration by the Commissioners at the earliest possible time.

Respectfully Submitted,

TEXAS COMMISSION ON
ENVIRONMENT QUALITY

Robert Martinez, Director
Environmental Law Division

by



Jessica Cuparello

State Bar of Texas No. 24035758

Environmental Law Division

P.O. Box 13087, MC 173

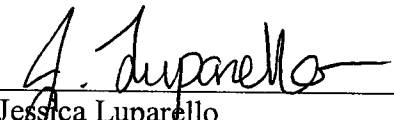
Austin, Texas 78711-3087

Phone: (512) 239-0608

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2006, a true and correct copy of the foregoing document was placed into United States Mail, hand delivered, faxed, or sent by interagency mail to all persons on the attached mailing list.



Jessica Luparello
Staff Attorney
Environmental Law Division

SEP-21-2006 THU 04:04 PM davidson troilo

FAX NO. 2103490041

P. 02/24

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September 19, 2006

Certified Article Number

7160 3901 9849 5028 1478

SENDERS RECORD

VIA CERTIFIED MAIL/RRR

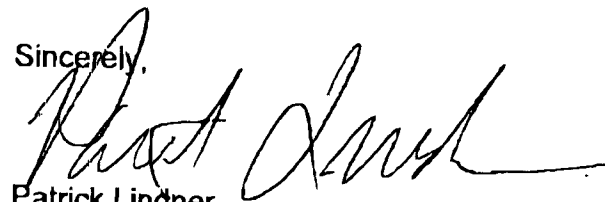
Honorable William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
William P. Clements Building
300 West Fifteenth Street
Austin, TX 78701

Re: SOAH Docket No. 582-06-0425; TCEQ Docket No. 2005-1516-UCR
Application of Tapatio Springs Service Company, Inc. to Amend
Certificates of Convenience and Necessity Numbers 12122 and 20698 in
Kendall County, Texas.

Dear Judge Newchurch:

Enclosed is the original certified Water Utility Tariff you requested in the above-referenced matter. Also, attached is a copy of a prior Settlement Agreement revising the rate.

Sincerely,



Patrick Lindner
For the Firm

cc: See attached Mailing List

Honorable William G. Newchurch
September 19, 2006
Page 2 of 3

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Office of the Chief Clerk
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Austin, Texas 78711

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SEP-21-2006 THU 04:04 PM davidson troillo

FAX NO. 2103490041

P. 04/24

FILE COPY

AT THE OFFICE OF THE
CLERK OF THE
STATE OF TEXAS

RECEIVED
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STATE OF TEXAS
CLERK OF THE
STATE OF TEXAS

SEP 14 2006

STATE OF TEXAS
CLERK OF THE
STATE OF TEXAS

WATER UTILITY TARIFF

FOR

TAPATIO SPRINGS SERVICE COMPANY, INC.

(Utility Name)

(Business Address)

Boerne

TX 78015

() 37-4121

(City)

(State)

(Zip Code)

(Area Code/Telephone No.)

This tariff is effective for utility operations under the following Certificate(s) of Convenience and Necessity:

11123

This tariff is effective in the following counties:

Kendall

This tariff is effective in the following cities or unincorporated towns (if any):

This tariff is effective in the following subdivisions or systems:

Tapatio Springs Country Club Subdiv.

TABLE OF CONTENTS

The above utility lists the following sections of its tariff (if additional pages are needed for a section, all pages should be numbered consecutively):

SECTION	PAGE
1.0 RATE SCHEDULE.....	2
2.0 SERVICE RULES.....	3
3.0 EXTENSION POLICY.....	9
4.0 WATER RATIONING PLAN.....	11
APPENDIX A SERVICE AGREEMENTS.....	

Tapatio Springs Service Company, Inc.

Water Tariff Page No. 2

(Water Utility Name)

Revision No. **SECTION 1.0--RATE SCHEDULE****Section 1.01--Rates**

METER SIZE	Monthly Minimum Charge including <u>6,000</u> gallons	Gallonge Charge
5/8" or 3/4"	\$ <u>10.00</u> per month	\$ <u>1.00</u> per
1"	\$ <u> </u> per month	<u>1000</u> gallons
1 1/2"	\$ <u> </u> per month	
2"	\$ <u> </u> per month	
3"	\$ <u> </u> per month	
4"	\$ <u> </u> per month	

SAME FOR ALL SIZES

TEXAS WATER COMMISSION

APPROVEDDATE 9/21/06 DOCKET 7376-C**Section 1.2--Miscellaneous Fees**

TAP FEE.....**TARIFF CLERK** \$ 175.00
 Tap fee is limited to the average of the Utility's actual costs for materials and labor for standard residential connections of 5/8" or 3/4" meter

RECONNECTION FEE.....\$ 10.00

The reconnect fee will be charged before service can be restored to a customer who has been disconnected at a) the customer's request, b) reasons listed under Section 2.0 of this tariff, or c) reasons listed in the Commission's Substantive Rules.

LATE CHARGE

A one-time penalty of \$1.00 or 5.0% whichever is larger may be made on delinquent bills. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing.

RETURNED CHECK CHARGE.....\$ 10.00

CUSTOMER DEPOSIT (Maximum \$50).....\$ none

TO BECOME EFFECTIVE, THIS PAGE MUST BE STAMPED APPROVED BY THE TEXAS WATER COMMISSION

Key to Codes

C--Regulation Change D--Discontinued I--Increase N--New
 R--Reduction E--Error Correction
 T--Change in text, but no change in regulation

Fountain Springs Service Company, Inc.

(Water Utility Name)

TEXAS WATER COMMISSION	
APPROVED	
DATE <u>5/31/85</u>	DOCKET <u>7326C</u>
FILE _____	BY <u>KA</u>
TARIFF CLERK <u>ph</u>	

Page No. 3**SECTION 2.0--SERVICE RULES AND REGULATIONS****Section 2.01--Application for Service**

All applications for service will be made on the utility's standard application or contract form (attached in Appendix A to this tariff) and will be signed by the applicant before water service is provided by the utility. A separate application or contract will be made for each service at each separate location.

Section 2.02--Water Installation

After the applicant has met all the requirements, conditions and regulations for service, the utility will install a tap, meter and cut-off valve and/or take all necessary actions to initiate service. The utility shall serve each qualified applicant for service within its certified area as rapidly as is practical after accepting a completed application. The utility shall provide service in a timely manner on a non-discriminatory basis.

Service requests not involving line extensions, construction or new facilities shall be filled no later than fourteen (14) working days after a completed application has been accepted. If construction is required which cannot be completed within thirty (30) days, the utility shall provide a written explanation of the construction required and an expected date of service. Service shall be provided within thirty (30) days of the expected date, but no later than 180 days after a completed application was accepted. Failure to provide service within this time frame shall constitute refusal to serve.

Section 2.03--Refusal of Service

The utility may decline to serve an applicant until such applicant has complied with both state and municipal regulations, the approved rules and regulations of the utility on file with the Commission and for the following reasons:

1. the applicant's installation or equipment is known to be inadequate or of such character that satisfactory service cannot be given;
2. the applicant is indebted to any utility for the same kind of service as that applied for, provided, however, that in the event the indebtedness of the applicant is in dispute, the applicant shall be served upon complying with the deposit requirement of the utility; or,
3. refusal to make a deposit, if applicant is required to make a deposit by the utility.



Tipatio Springs Service Company, Inc.
(Water Utility Name)

DATE 2/3/07 DOCKET 1376 Water Tariff Page No. 1

FILE 1 BY J.A.
TARIFF CLERK

SECTION 2.03--SERVICE RULES AND REGULATIONS (CONT.)

Section 2.03--Refusal of Service (Cont.)

In the event that the utility shall refuse to serve an applicant, the utility must inform the applicant of the basis of its refusal. The utility is also required to inform the applicant that it may file a complaint with the Commission.

Section 2.04--Customer Deposits

If the residential applicant cannot establish credit to the satisfaction of the utility, the applicant may be required to pay a deposit that does not exceed \$50.00 for water utility service.

The utility must keep a record of each deposit, issue a receipt for it, and pay annual interest at a rate set each calendar year by the Commission. The utility shall maintain all funds received as customer deposits in a separate, federally insured, interest bearing account and shall use such funds only for the purpose of payment of unpaid bills guaranteed by such deposits, payment of interest to depositors and refund of deposits to depositors.

The utility must automatically refund the deposit plus accrued interest:

1. if service is not connected;
2. after disconnection of service if the deposit or portion of the deposit exceeds any unpaid bills; or,
3. to any residential customer who has paid service bills for 12 consecutive months without being disconnected for nonpayment and without more than two occasions in which a bill was delinquent. The refund need not be made if payment on the current bill is delinquent.

Non-residential applicants, if unable to establish satisfactory credit, may be required to make a deposit not to exceed one-sixth (1/6) of the estimated annual billings.

Section 2.05--Meter Requirements, Readings, and Testing

All water sold by the utility shall be billed based on meter measurements. The utility shall provide, install, own and maintain meters to measure amounts of water consumed by its customers. No meter shall be placed in service unless its accuracy has been established.

One meter is required for each residential, commercial or industrial facility. An apartment building or a trailer or mobile home park may be considered to be a single commercial facility.



 (Water Utility Name)

 Water Tariff Page No. _____

SECTION 2.0 SERVICE RULES AND REGULATIONS (CONT.)

Section 2.05--Meter Requirements, Readings, and Testing

Service meters shall be read at monthly intervals and as nearly as possible on the corresponding day of each monthly meter reading period. If the circumstances warrant, meters may be read at other than monthly intervals.

Upon request, a customer may have his meter tested, without charge, in his presence or in that of his authorized representative, at a convenient time to the customer, but during the utility's normal working hours. A charge not to exceed \$15.00 may be assessed for an additional requested test within two years of the first test if the additional test shows the meter to be accurate.

Section 2.06--Billing

Bills from the utility shall be rendered monthly unless otherwise authorized by the Commission. Payment is considered late if not received at the utility's office or postal address within sixteen (16) days of the billing date. The postmark on the envelope of the bill or the recorded date of mailing by the utility, if there is no postmark on the envelope, shall constitute proof of the date of issuance.

A one-time penalty of \$1.00 or 5.0%, whichever is larger, may be made on delinquent bills. However, no such penalty may be collected unless a record of the date of mailing is made at the time of the mailing and maintained at the principal office of the utility.

Each bill shall show the following information (if applicable):

1. the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;
2. the number and kind of units metered;
3. the applicable rate schedule, title, or code;
4. the total amount due for water service;
5. the due date of the bill;
6. the date by which customers must pay the bill in order to avoid addition of a penalty;
7. the total amount due as penalty for nonpayment within a designated period;
8. a distinct marking to identify an estimated bill; and
9. any conversions from meter reading units to billing units from recording or other devices, or any other factors used in determining the bill.

The information required in items 1-9 above shall be arranged to allow the customer to readily compute his bill with a copy of the utility's rate schedule which shall be provided by the utility at the request of the customer.



REGULATORY SERVICES DIVISION

(Water Utility Name)

SECTION 2.0 SERVICE RULES AND REGULATIONS (CONT.)**Section 2.06--Billing (cont.)**

In the event of a dispute between a customer and a utility regarding any bill for utility service, the utility shall conduct an investigation and report the results to the customer. If the dispute is not resolved, the utility shall inform the customer that a complaint may be filed with the Commission.

Section 2.07--Service Disconnection

The utility is encouraged to offer a deferred payment plan to a customer who cannot pay an outstanding bill in full and is willing to pay the balance in reasonable installments. However, a customer's utility service may be disconnected if a bill has not been paid or a deferred payment agreement entered into within 28 days from the date of issuance of a bill and if proper notice has been given.

Proper notice shall consist of a separate mailing or hand delivery at least ten (10) days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice must also list the past due balance.

Utility service may be disconnected after proper notice for any of the following reasons:

1. failure to pay a delinquent account or to comply with a deferred payment agreement;
2. willful violation of a utility usage rule when that violation interferes with another customer's service; or,
3. failure to comply with valid deposit or guarantee arrangements.

Service may only be disconnected without notice:

1. when a known dangerous condition exists, for as long as the condition exists;
2. when service is established through meter bypassing, an unauthorized connection or unauthorized reconnection; and,
3. in instances of tampering with the utility company's meter or equipment.

A utility may not disconnect any customer for failure to pay for merchandise or service unrelated to utility service, even if the utility provides that merchandise or those services. A utility may not disconnect any customer for a previous occupant's failure to pay.

Utility personnel must be available to make collections and to reconnect service on the day of and the day after any disconnection of service unless service was disconnected at the customer's request or because of a hazardous condition.

TEXAS WATER COMMISSION	
APPROVED	
DATE <u>9/21/06</u>	DOCKET <u>2326</u>
FILE <u> </u>	BY <u>DA</u>
TARIFF CLERK <u>A</u>	

(Water Utility Name)

Tariff Page No. _____

SECTION 2.0 SERVICE RULES AND REGULATIONS (CONT.)

Section 2.08--Service Interruptions

The utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall re-establish service within the shortest possible time. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled.

The Commission shall be notified in writing of any service interruptions affecting the entire system or any major division of the system lasting more than four hours. The notice shall also state the cause of such interruptions.

Section 2.09--Termination of Utility Service

No utility may abandon any customer or any portion of its service area without prior written notice to affected customers and neighboring utilities and prior Commission approval.

Section 2.10--Quality of Service

Each utility must plan, furnish, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses. Minimum residual pressure at the consumer's meter shall be at least 20 psi during periods of peak usage and 35 psi during normal operating conditions.

The water system quantity requirements of the Texas Department of Health shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission and distribution facilities of water utilities for household usage. Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area.

Each utility shall furnish water which has been approved by the Texas Department of Health. The application of Commission rules shall not relieve the utility from complying with the requirements of the laws and regulations of the State, local Department of Health, local ordinances and all other regulatory agencies having jurisdiction over such matters.

Tapatio Springs Service Company, Inc.

(Water Utility Name)

Water Tariff Page No. 9
Revision No. _____**SECTION 2.20 SPECIFIC UTILITY SERVICE RULES AND REGULATIONS**

This section contains specific utility service rules in addition to the standard rules previously listed under Section 2.0. It must be reviewed and approved by the Texas Water Commission to be effective.

NONE



TO BECOME EFFECTIVE, THIS PAGE MUST BE STAMPED APPROVED BY THE TEXAS WATER COMMISSION

Key to Codes

C--Regulation Change D--Discontinued I--Increase N--New
R--Reduction E--Error Correction
T--Change in text, but no change in regulation

Tarrant Springs Service Company, Inc.

Water Tariff Page No. 9

(Water Utility Name)

SECTION 3.0--EXTENSION POLICY

Section 3.01--Standard Extension Requirements

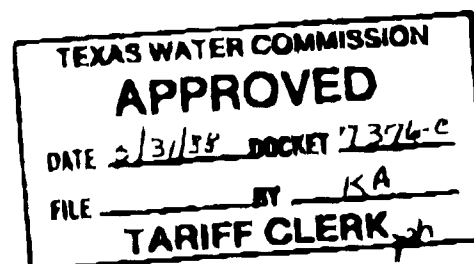
Contributions in aid of construction shall not be required of individual residential customers for production, storage, treatment or transmission facilities.

The utility will bear the cost of the first 200 feet of water main necessary to extend service to an individual residential customer. The utility shall bear the full cost of any oversizing of water mains to serve other residential customers in the area. If the specific utility extension policy stated in Section 3.20 of this tariff requires, residential customers may be required to pay for additional main beyond the first 200 feet.

The extension policy may not be applied to requests for service where the utility already has a line in place, even though the line may be overloaded.

Individual residential customers who place a unique or non-standard service demand on the system may be charged the actual costs of any additional transmission or storage facilities required over and above the standard requirements.

If specifically stated in Section 3.20 of this tariff, developers may be required to provide contributions in aid of construction in amounts to furnish the system with facilities compliant with Texas Department of Health minimum design criteria for facilities used in the production, transmission, pumping, storage or treatment of water.



Lanatin Springs Service Company, Inc.
(Water Utility Name)

Water Tariff Page No. 19
Revision No.

SECTION 3.20--SPECIFIC UTILITY EXTENSION POLICY

This section contain a specific extension policy in addition to the standard policy already stated under Section 3.0. It must be reviewed by the Texas Water Commission to be effective.

NONE



TO BECOME EFFECTIVE, THIS PAGE MUST BE STAMPED APPROVED BY THE TEXAS WATER COMMISSION

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R--Reduction

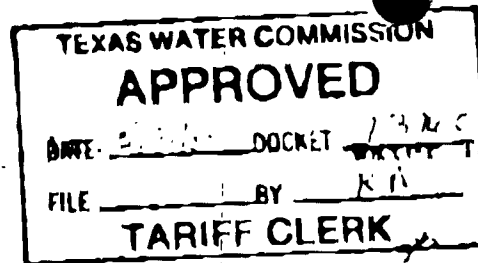
T--Change in text, but no change in regulation

D--Discontinued

E--Error Correction

I--Increase

N--New



(Water Utility Name)

SECTION 4.0--EMERGENCY WATER RATIONING PROGRAM

In cases of extreme drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, it may be necessary to institute water rationing. Water rationing can be implemented only for emergency use during periods of acute water shortage. The purpose of the Emergency Water Rationing Program is to conserve the total amount of water demanded from the utility until supply can be restored to normal levels. The rationing program shall not exceed sixty (60) days without written approval of the Texas Water Commission.

Water rationing is not a legitimate alternative when water systems are deficient in meeting the minimum "Water System Quantity Requirements" of the Texas Department of Health during normal use periods, or when the utility is not making all immediate and necessary efforts to replace or repair malfunctioning equipment.

Section 4.01--General Provisions

DECLARATION OF EMERGENCY: When system demand exceeds production or storage capability measured over a 24-hour period and refilling the storage facilities is rendered impossible, OR when the utility is notified by its wholesale supplier of a cutback in water to be delivered to such an extent that normal use patterns will no longer be possible, the utility may declare an emergency to exist and thereafter ration water in the following manner.

NOTICE REQUIREMENTS: Written notice to each customer of the proposed rationing shall be mailed 72 hours or hand delivered 24 hours before the utility actually starts the program. Notice shall also be placed in a local newspaper and the utility shall send a copy of the notice to the Texas Water Commission at the same time notice is sent to the customers. The customer notice shall contain the following information:

1. the date rationing shall begin;
2. the date rationing shall end;
3. the stage of rationing and explanation of rationing to be employed; and,
4. explanation of penalties for violations.

VIOLATION OF EMERGENCY RATIONING RULES.

1. First violation-the utility may install a flow restricter in the line to limit the amount of water which will pass through the meter in a 24 hour period. The cost to be charged to the customer's account shall be the actual installed cost to the utility, not to exceed \$50.00.
2. Subsequent violations-the utility may terminate service at the meter for a period of seven (7) days, or until the end of the calendar month, whichever is LESS. The normal reconnect fee of the utility shall apply for restoration of service.